



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

CPSC/OFFICE OF  
THE SECRETARY

## BALLOT VOTE SHEET

2003 JAN 27 A 11: 0

DATE: JAN 22 2003

TO: The Commission  
Todd A. Stevenson, Secretary

THRU: Patricia Semple, Executive Director *PS*  
W. H. DuRoss, III, General Counsel *W.D.*  
Stephen Lemberg, Assistant General Counsel for Administrative Law *SL*

FROM: Lowell F. Martin, Attorney-Advisor, GCAL *LFM*

SUBJECT: Addition of electric bicycles to scope of 16 CFR part 1512

BALLOT VOTE DUE FEB 3 2003

Public Law 107-319, 116 Stat. 2776 (the Act), enacted December 4, 2002, copy attached, subjects low-speed electric bicycles to the Commission's existing regulations for bicycles at 16 CFR part 1512 and 16 CFR 1500.18(a)(12). The Act defines a low-speed electric bicycle as "a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph." Pub. L. No. 107-319, § 1, 116 Stat. 2776 (2002).

The attached draft Federal Register notice would amend 16 CFR part 1512 to include low-speed electric bicycles among the bicycles defined as subject to that part, as required by the Act.

Section 553(b)(3)(B) of the Administrative Procedure Act states that the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The requirement reflected in the attached draft rule is imposed by the Act and is not discretionary with the Commission. Accordingly, the Office of the General Counsel recommends that the Commission issue the amendment to part 1512 as an immediately effective final rule to assist in promptly advising the public of the new statutory requirements on low-speed electric bicycles.

Please indicate your vote on the following options:

NOTE: This document has not been  
reviewed or accepted by the Commission.

Initial *rh* Date *1/22/03*

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

Comments or suggestions are invited.

\_\_\_\_ No Mfrs/Private Labels or

Products Identified

☒ E-mail by *Rutemaking*

\_\_\_\_ Firms Notified

Comments Processed. *1-22-03*

I. Issue the attached *Federal Register* notice as drafted.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Issue the attached *Federal Register* notice with changes. (Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Take other action. (Please specify).

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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachments

1. - Pub. L. No. 107-319

2. - Draft *Federal Register* notice

Public Law 107-319  
107th Congress

An Act

Dec. 4, 2002  
[H.R. 727]

To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CONSUMER PRODUCT SAFETY ACT.**

The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

**“LOW-SPEED ELECTRIC BICYCLES**

15 USC 2085.

“SEC. 38. (a) Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 3(a)(1) and shall be subject to the Commission regulations published at section 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

“(b) For the purpose of this section, the term ‘low-speed electric bicycle’ means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

“(c) To further protect the safety of consumers who ride low-speed electric bicycles, the Commission may promulgate new or amended requirements applicable to such vehicles as necessary and appropriate.

“(d) This section shall supersede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a).”.

49 USC 30102  
note.

**SEC. 2. MOTOR VEHICLE SAFETY STANDARDS.**

For purposes of motor vehicle safety standards issued and enforced pursuant to chapter 301 of title 49, United States Code,

a low-speed electric bicycle (as defined in section 38(b) of the Consumer Product Safety Act) shall not be considered a motor vehicle as defined by section 30102(6) of title 49, United States Code.

Approved December 4, 2002.

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**LEGISLATIVE HISTORY—H.R. 727:**

HOUSE REPORTS: No. 107-5 (Comm. on Energy and Commerce).

**CONGRESSIONAL RECORD:**

Vol. 147 (2001): Mar. 6, considered and passed House.

Vol. 148 (2002): Nov. 18, considered and passed Senate.

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Billing Code 6355-01-P

**CONSUMER PRODUCT SAFETY COMMISSION**

**Requirements for Low-Speed Electric Bicycles**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final Rule.

**SUMMARY:** Public Law 107-319, 116 Stat. 2776 (the Act), enacted December 4, 2002, subjects low-speed electric bicycles to the Commission's existing regulations at 16 CFR part 1512 and 16 CFR 1500.18(a)(12) for bicycles that are solely human powered. For purposes of this requirement, the Act defines a low-speed electric bicycle as "a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph." Pub. L. No. 107-319, § 1, 116 Stat. 2776 (2002). The Commission is issuing this immediately effective amendment to its requirements for bicycles at 16 CFR part 1512 to promptly inform the public of the newly enacted statutory requirement on low-speed electric bicycles.

**DATES:** This amendment is effective upon publication in the

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Federal Register, that is, on [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Lowell Martin, Esq., Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-7628; e-mail [lmartin@cpsc.gov](mailto:lmartin@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 107-319 (the Act), enacted December 4, 2002, amends the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051, *et seq.*, by adding a new section 38 establishing requirements for low speed electric bicycles.

Specifically, section 1 of the Act makes low-speed electric bicycles subject to the Commission's existing regulations on bicycles.

(a) Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 3(a)(1) [of the CPSA] and shall be subject to the Commission regulations published at section 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

Pub. L. No. 107-319, § 1, 116 Stat. 2776.

The Act defines the term "low-speed electric bicycle" as follows:

(b) for purposes of this section, the term "low-speed electric bicycle" means a two- or three-

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wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

*Id.*

The Commission's regulation at 16 CFR 1500.18(a)(12) makes the determination that bicycles that do not comply with the requirements of 16 CFR part 1512 present a mechanical hazard within the meaning of section 2(s) of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. 1261(s). The effect of this determination is that noncomplying bicycles are "hazardous substances" for purposes of section 2(f)(1)(D) of the FHSA, and are also "banned hazardous substances" pursuant to section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A). See also, Forester v. Consumer Product Safety Com'n, 559 F.2d 774, 783-786.

The amendment to section 1512.2 of 16 CFR part 1512 promulgated today incorporates the Act's definition of "low-speed electric bicycle," thereby helping to inform the public of the statutory application of part 1512 to low-speed electric bicycles.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain

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notice procedures for a rule when it finds "good cause" to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under section 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The requirement reflected in this amendment is imposed by the Act and is not discretionary with the Commission. Accordingly, the Commission hereby finds that notice and an opportunity for comment on this amendment are unnecessary.

Section 553(d)(3) of the APA authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the *Federal Register* at least 30 days before its effective date. The Commission hereby finds that the 30 day delay in effective date is unnecessary because the requirement reflected in the amendment was imposed by the Act and is not discretionary with the Commission.

Because this amendment incorporates a requirement mandated by statute that is not discretionary with the Commission, and thus is not subject to notice and comment, this rule is not subject to the Regulatory Flexibility Act,



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5 U.S.C. 601, *et seq.* Because this amendment incorporates a statutory requirement not subject to agency discretion, it is not an agency action subject to the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Pursuant to Executive Order No. 12988, the Commission states the preemptive effect of this regulation as follows. Section 1 of the Act provides that its requirements "shall supercede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a) [the Commission's regulations on bicycles at 16 CFR part 1512]." Pub. L. No. 107-319, § 1, 116 Stat. 2776.

### **List of Subjects in 16 CFR Part 1512**

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

For the foregoing reasons, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

#### **PART 1512-REQUIREMENTS FOR BICYCLES.**

1. The authority citation for Part 1512 is revised to read as follows:

**Authority:** Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1),

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74 Stat. 372, 374, 375, as amended, 80 Stat. 1304-05, 83 Stat. 187-89 (15 U.S.C. 1261, 1262; Pub. L. 107-319, 116 Stat. 2776.

2. Amend § 1512.2, to revise paragraph (a) to read as follows:

(a) *Bicycle* means:

(1) a two-wheeled vehicle having a rear drive wheel that is solely human-powered;

(2) a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Dated:

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Todd A. Stevenson, Secretary  
Consumer Product Safety Commission